

Moradi v. Workers' Compensation Appeal Tribunal

Decision Summary

Court	BC Supreme Court
Citation	Unreported
Result	Petition denied
Judge	Giltrow
Date of Judgment	June 6, 2025
WCAT Decision(s) Reviewed	A2003118

Keywords:

Prohibited action complaint – Limited scope – Burden of proof – Onus of proof – Standard of review – Procedural fairness - Costs

Summary:

The Petitioner was a probationary worker in the deli section of a grocery store. She made complaints to the employer regarding food hygiene and alleged that coworkers bullied and harassed her. The employer conducted evaluations of her work and found her performance to be lacking. After about 2.5 months, the employer dismissed her.

The Petitioner filed a prohibited action complaint (“PAC”) with the Workers’ Compensation Board (“Board”), claiming that her dismissal was due to her raising occupational health and safety (“OHS”) concerns. The employer countered that the dismissal was performance related.

The Board officer held that as the Petitioner had raised OHS issues and the employer had dismissed her, she had established a *prima facie* case, shifting the onus of proof onto the employer. However, the Board officer found that the employer’s evidence showed that the dismissal was motivated by performance issues, and not by any anti-OHS motivation.

On appeal, the Vice Chair noted that a PAC proceeding has a much narrower scope than a wrongful dismissal lawsuit. The issue is not whether the employer had just cause to dismiss the Petitioner, but whether the dismissal was in any way motivated by the Petitioner’s raising of OHS issues. The Vice Chair noted that the employer appeared to take the Petitioner’s concerns seriously and conducted investigations. While the employer advised her that they were unable to substantiate her concerns, they encouraged her to come forward if she had other concerns. The employer documented that throughout her employment, they had raised performance issues such as not following instructions and procedures, and was slow in completing tasks. Viewing the evidence as a whole, the Vice Chair held that the employer had shown on a balance of probabilities, the dismissal was not tainted by anti-OHS motivation.

On judicial review, the Petitioner challenged the Vice Chair's findings of fact and raised procedural fairness concerns. The Judge noted that on judicial review, a court may not simply substitute its findings for those of the tribunal. Pursuant to section 58 of the *Administrative Tribunal Act*, the Vice Chair's findings of fact must be assessed by the most deferential standard of review: patent unreasonableness. The judge also noted the limited scope of a PAC proceeding. The employer was not required to show it had just cause to dismiss the Petitioner, only that it did so in good faith. The judge held that there was sufficient evidence to support the Vice Chair's finding that the employer had met this burden.

Also, the Petitioner asserted that the Vice Chair should have subpoenaed witnesses whom she believed would have assisted her case. However, the court noted that this request was made late in the WCAT proceeding, and that the proposed witnesses were to testify on performance issues, which were only tangentially relevant. The Vice Chair also declined the Petitioner's request for production of CCTV footage from the workplace. The judge held that this ruling was fair having regard to the circumstances, noting the principle stated in *Knight v. Indian Head School Division No. 19*, 1990 CanLII 138 that tribunals must "achieve a certain balance between the need for fairness, efficiency and predictability of outcome". In declining to order production and review of approximately 250 hours of CCTV footage, the Vice Chair struck a fair balance between fairness and efficiency.

Accordingly, the judge found no grounds to interfere with the WCAT decision, and awarded the employer costs against the Petitioner.